

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LUIS ANTONIO AGUILAR MARQUINEZ,
et al.,

Plaintiffs,

v.

DOLE FOOD COMPANY, INC., *et al.*,

Defendants.

Civil Action No. 12-695-RGA (consolidated)

TOBIAS BERMUDEZ CHAVEZ, *et al.*,

Plaintiffs,

v.

DOLE FOOD COMPANY, INC., *et al.*,

Defendants.

Civil Action No. 12-697-RGA

MEMORANDUM ORDER

In briefing their cross-motions for summary judgment (No. 12-695, D.I. 333, 339, 354), the parties submitted conflicting expert declarations on the contents of Ecuadorian law. (D.I. 341, D.I. 356-1, Ex. B, D.I. 360-2, Ex. 2). In broad terms, the experts disagree as to whether a Protection Action under Ecuadorian constitutional law is an appropriate mechanism for Plaintiffs' claims. Without a clear answer to this question (and I do not think it is clear that one expert is more persuasive than the other), it is hard for me to determine foreign law, as I must do. Fed. R. Civ. P. 44.1. And, without that determination, I cannot resolve the parties' arguments

under the Delaware Borrowing Statute. Accordingly, I think I should appoint an expert in Ecuadorian law to advise the Court on the applicability of a Protection Action.

Thus, unless any party SHOWS CAUSE why I should not appoint such an expert, *see* Fed. R. Evid. 706(a), I will do so. If any party thinks it can show cause, it shall do so by August 13, 2021.

Assuming that there are no efforts to show cause, the parties are directed to meet and confer in order to nominate one or more individuals who could serve as experts in Ecuadorian law. In addition to the necessary expertise in Ecuadorian law, the individuals should ideally be: (1) capable of comparing Ecuadorian law to United States law; (2) fluent in both English and Spanish; and (3) resident in the United States. The Court will consider any such individuals the parties are able to suggest, while reserving the right to appoint someone else.

The parties are directed to submit any such nominations by August 20, 2021.

IT IS SO ORDERED this 5th day of August 2021.

/s/ Richard G. Andrews
United States District Judge